

12:12PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

February 26, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF LAWRENCE JAY
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

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PRESENT:

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* * * * *

(Excerpt commenced at 10:47 a.m.)

(Jury is present.)

THE COURT: The government can call its next witness.

MR. COOPER: The government calls Lawrence Jay.

L A W R E N C E J A Y, having been duly called and sworn,
testified as follows:

MR. COOPER: May I inquire, Judge?

THE COURT: You may.

DIRECT EXAMINATION BY MR. COOPER:

Q. Good morning, Mr. Jay, how are you?

A. Good morning, sir, how are you?

Q. Well, thank you. Can you tell the jury a little bit
about your background and your education?

A. Yes. So, spent a little bit of time in the Air Force,
went to the U.S. Air Force Security Police Academy.

1 Graduated from Saint John Fisher College with a
2 bachelor's degree in English.

3 Spent 25 years with the U.S. Border Patrol. Went through
4 the 311 session with the U.S. Border Patrol.

5 And I'm also a graduate of the FBI National Academy,
6 249th session.

7 And I retired in November of 2020 from the U.S. Border
8 Patrol out of headquarters in D.C. I had spent several years
9 on the southwest border, in addition to the northern border
10 here.

11 And I also worked as a task force officer with the Joint
12 Terrorism Task Force with the FBI office here in Buffalo.

13 Q. Thank you. I want to speak specifically about your time
14 with the United States Border Patrol. You mentioned that you
15 worked there for 25 years?

16 A. That's correct.

17 Q. Okay. Can you tell the jury a little bit about where you
18 started working in the U.S. Border Patrol?

19 A. So I went through the Federal Law Enforcement Training
20 Center in New Brunswick, Georgia, in 1996. That was a
21 six-month academy. And my initial duty station out of
22 academy was in the San Diego sector, specifically El Cajon
23 Station.

24 So that's a primarily a roving patrol, a line watch,
25 meaning border enforcement right on the line with the

1 international border with Mexico, and some checkpoint duties
2 as well.

3 Q. Got it. And can you tell the jury a little bit about,
4 like, your actual day-to-day responsibilities when you were
5 working in San Diego and Arizona?

6 A. So day-to-day involvement when I first started out was a
7 lot of roving patrol duties, as I mentioned. When you're out
8 in the vehicle patrolling looking for smuggling loads with
9 people crossing the border getting into vehicles.

10 You did a lot of tactical tracking in the mountains when
11 a ground sensor would go off, you would have your list, you
12 would respond to the area accordingly. And then you would
13 conduct tracking operations and work that in conjunction with
14 your counterparts in the field to try and apprehend the
15 illegal border crossers.

16 Q. Thank you. Did there come a time when your work took you
17 to the northern border?

18 A. It did. I ended up receiving a promotion, and I
19 transferred to the Buffalo sector to -- it's a senior patrol
20 agent position from a border patrol agent position. And I
21 came back to with the northern border around the winter of
22 2002.

23 Q. So would it be fair to say that was about six years after
24 you started in border patrol?

25 A. That's correct.

1 Q. Okay. As a senior agent, how did your responsibilities
2 change if at all?

3 A. Just a little bit different dynamics here up in Buffalo.
4 You work a lot with your federal, state, and local partners.
5 You work a lot of -- it's not so much you're out in the field
6 working in that rigorous terrain, it's more other agency
7 calls for assistance from local law enforcement. It's
8 immigration enforcement at the bus station. Assisting the
9 transit police at the airport. And just, you know,
10 patrolling the areas in between the ports of entry. So you
11 would -- we would cover the areas here in Buffalo sector, we
12 have six stations that go -- start at Erie, Pennsylvania, and
13 they head all the way out east to Watertown, Wellesley Island
14 Station.

15 So any of the area in between those ports of entry, we're
16 tasked with doing -- conducting line watch and border
17 enforcement operations.

18 Q. Is there an intelligence position or intelligence agent
19 position within the Border Patrol?

20 A. Yes, sir, there is. So there's 20 sectors throughout the
21 United States Border Patrol. Every sector has agents
22 assigned to the intelligence unit.

23 Q. Did there come a time in your career when you became
24 assigned to the intelligence unit?

25 A. I did. I was promoted from senior patrol agent to lead

1 border patrol agent in -- for intelligence purposes. And so
2 I started actually working in the intel realm, and taking on
3 the commensurate amount of training as far as working with
4 sources and, you know, working with other task force
5 officers.

6 Q. Approximately when did you take on that role as an intel
7 agent?

8 A. I want to say a couple years after that, so about 2005.

9 Q. You described for us a moment ago the sorts of
10 responsibilities that you would have in that position. Can
11 you tell the jury if you received any either educational
12 training, or on-the-job training, with respect to handling
13 sources or informants?

14 A. Yes. So, there's different -- I mean, obviously, there's
15 on-the-job training, you learn from your mentors and your
16 peers, more seasoned agents. But they have a national
17 collaboration course that you go to, and they run you
18 through, they teach you surveillance techniques.

19 I, in fact, that intel role was unique. Members of my
20 team and I, we were actually -- we worked very close with the
21 border enforcement teams in Canada, in the Niagara region,
22 and in Toronto.

23 We had actually been invited to go to their source
24 training as well, and we actually went through their source
25 class, about ten of us, just to -- for them to teach us how

1 they do business and just share information.

2 Q. On that subject of other law enforcement agencies, was it
3 a part of your job as an intel agent to interface with other
4 law enforcement agencies?

5 A. Every single day. Whether it's, like I said, federal,
6 state, local, tribal, and also on both sides of the border.
7 I mean, our mantra was kind of push the border out strategy,
8 to try and figure out what -- what Canada's being affected
9 with, or what Mexico is being affected with for the intel
10 guys down south, and then work in conjunction with your
11 counterparts to try and make the community a lot safer.

12 Q. And during the course of your career, did you, in fact,
13 interface with federal law enforcement agents?

14 A. All the time.

15 Q. Okay. Did you work with people from the FBI?

16 A. Yes.

17 Q. Did you work with people from the DEA?

18 A. Yes.

19 Q. Okay. And during the course of your career interfacing
20 with those other law enforcement agencies, would it be fair
21 to say that some inherent trust develops between yourself and
22 those members of other law enforcement agencies.

23 A. Absolutely. It's almost like an unspoken etiquette or
24 unspoken -- not -- not so much a code, but you have
25 counterparts in these other federal agencies. And you take

1 what they're telling you at face value, and you believe their
2 credibility.

3 Q. In order to effectively do your job, did you have to rely
4 on information provided to you by other law enforcement
5 agencies?

6 A. Absolutely.

7 Q. Okay. Without getting into any specific cases, generally
8 though, when you were working as an intel agent, did you work
9 on drug cases?

10 A. Yes. There was a nexus to the -- if there was a
11 cross-border event, we had some events on the lower river, we
12 had some events on the upper river where there may have been
13 aliens that have been smuggling, by being -- getting smuggled
14 by alien smuggling organizations operating in and out of
15 Toronto. Sometimes they would comingle their loads with
16 narcotics as well.

17 So you would have not only illegal aliens transiting
18 across the lower river coming to make entry into the U.S.,
19 but they also may be bringing some narcotics with them as
20 well.

21 Q. You told us a little earlier about the education and
22 training that you received in working with sources of
23 information. During your time as an intel agent, did you
24 actually participate by handling or obtaining information
25 from sources?

10:55AM 1 A. Yeah. We would work with sources that were reporting
10:56AM 2 whether they were fishermen, average citizens. We'd just
10:56AM 3 handle them as, you know, confidential sources of
10:56AM 4 information, and they would provide us with some information.
10:56AM 5 And then we would try to conduct our due diligence and follow
10:56AM 6 up investigation, and see if it -- where it would take us.

10:56AM 7 Q. Okay. I'd like to direct your attention now to the
10:56AM 8 summer of 2008. Okay? Were you working as an intel agent at
10:56AM 9 that time?

10:56AM 10 A. I was.

10:56AM 11 Q. Okay. And are you familiar with the name J.D.?

10:56AM 12 A. Yes, I am.

10:56AM 13 Q. Okay. Can you tell the jury how you know that
10:56AM 14 individual?

10:56AM 15 A. So, in working with some of our local counterparts in the
10:56AM 16 area, specifically Buffalo PD, we were members of their intel
10:56AM 17 working group that we would attend their meetings monthly.
10:56AM 18 And the gentleman that was running that meeting, his name was
10:56AM 19 Detective Kevin Maloney, who has since passed.

10:57AM 20 But Kevin reached out to me one day and said, listen, we
10:57AM 21 have an individual who's been beneficial for us in the past,
10:57AM 22 he's helped us on some cases. He's speaking to me about some
10:57AM 23 information here that may have a nexus to your line of work.
10:57AM 24 Would you want to meet him? And I said absolutely.

10:57AM 25 Q. So I'm not going to get into the details of the

10:57AM 1 information that you were informed J.D. might have, but is it

10:57AM 2 fair to say that you were introduced to J.D. by this

10:57AM 3 Detective Maloney?

10:57AM 4 A. Yes.

10:57AM 5 Q. Did you agree to meet with J.D.?

10:57AM 6 A. Yes, I met with the detective and Mr. J.D.

10:57AM 7 Q. So that's yourself, Detective Maloney, and J.D. in a

10:57AM 8 meeting together?

10:57AM 9 A. Yes.

10:57AM 10 Q. Okay. Again, without getting into the details of what

10:57AM 11 was said, did J.D. provide information to you?

10:57AM 12 A. He did provide information. And based on the fact that I

10:57AM 13 had a relationship with Kevin, I was understanding what Kevin

10:58AM 14 was saying to have some veracity.

10:58AM 15 Q. And did the information that J.D. provided to you seem

10:58AM 16 detailed? Yes or no?

10:58AM 17 A. It seemed detailed.

10:58AM 18 Q. Okay. And based on your training and experience, did you

10:58AM 19 believe it at the time to be information worth following up

10:58AM 20 on?

10:58AM 21 A. I mean, obviously, trust but verify.

10:58AM 22 Q. Did you intend to follow up on it after meeting with

10:58AM 23 J.D.?

10:58AM 24 A. I did. And I did follow up on it.

10:58AM 25 Q. Okay. Tell the jury, after that first meeting that you

1 have with J.D., what's the next step that you take?

2 A. So, in order to, you know, obviously trust and verify,
3 you want to conduct some deconfliction.

4 Q. What is deconfliction?

5 A. So we're trying to ascertain whether or not this
6 individual is being -- is a source for any other agent, a
7 state trooper, local PD. Is this gentleman working with
8 another law enforcement agency out there?

9 So I had actually asked Mr. J.D. if he was working or
10 affiliated with another law enforcement member.

11 Q. Okay. And when you asked Mr. J.D. if he was working or
12 affiliated with another law enforcement member, what did he
13 tell you?

14 A. He did say he had done some work, but we had to ask him a
15 couple more times. I said, well, can we specifically, you
16 know, have a name from you? Because I would like to talk
17 with the individual at hand.

18 Q. And did J.D. tell you the name of the individual that he
19 had done work with in the past?

20 A. Yeah. He mentioned that he had done some work with the
21 DEA and Agent Bongiovanni.

22 Q. What, if anything, did you decide to do with that
23 information?

24 A. Well, I had some contacts at the DEA, and I reached out
25 and I was able to obtain Joe's number. And I made a phone

10:59AM 1 call, trying to conduct due diligence, asking if Joe would
10:59AM 2 come and meet with us at the Buffalo station unbeknownst to
11:00AM 3 Mr. J.D. because I wanted to make sure that he was there so
11:00AM 4 that we could figure out if he was actually a bona fide
11:00AM 5 informant or, you know, what was transpiring.
11:00AM 6 Q. So is it fair to say that you set up a meeting with J.D.?
11:00AM 7 A. I did.
11:00AM 8 Q. And is it fair to say that you invited Bongiovanni to
11:00AM 9 come to that meeting as well?
11:00AM 10 A. I did. I did invite Joe.
11:00AM 11 Q. Okay. Do you recall that meeting as you sit here today?
11:00AM 12 A. I do recall it.
11:00AM 13 Q. Okay. Who arrived first, Mr. J.D. or Mr. Bongiovanni?
11:00AM 14 A. We had Mr. J.D. in the back -- back room at the station
11:00AM 15 in Tonawanda.
11:00AM 16 And then we had met Joe at front door, let him in.
11:00AM 17 And then he came into the back area in a K-9 room where
11:00AM 18 we had a meeting where it was out of sight from people. And
11:00AM 19 we just started to have a conversation there.
11:01AM 20 Q. Can you describe for the jury what happened when Special
11:01AM 21 Agent Bongiovanni showed up to that meeting?
11:01AM 22 A. Well, when Joe showed up into the room, I think Mr. J.D.
11:01AM 23 was very surprised to see him.
11:01AM 24 As I was kind of surprised at, you know, his reaction,
11:01AM 25 too, you could tell that he was a bit uncomfortable.

1 And, you know, we started to have a conversation about
2 where this was headed, if you -- are you working with the
3 DEA, you know, something to that effect. We were just trying
4 to have a conversation to see where -- what the next steps
5 were and what the path forward was with respect to some of
6 the info that was gleaned.

7 Q. Now, you mentioned that J.D. appeared nervous during that
8 meeting when Bongiovanni arrived. What was Bongiovanni's
9 demeanor like during that meeting?

10 A. Well, after we started talking, I mean, Joe was obviously
11 very upset. Basically, you know, wondering, if I remember
12 correctly, you know, he -- you're here at the Border Patrol
13 station. Why are you here? You work in conjunction with me
14 and with the DEA. You know, what are you doing here?

15 And he dressed him down pretty good. He was pretty upset
16 about that fact.

17 Q. When you say "dressed him down," what do you mean by
18 that?

19 A. He just, you know, was angry at the fact that J.D. was
20 physically present at the Border Patrol station, and was
21 possibly going to work with us from what my -- from my best
22 hypothesis.

23 Q. Did that interaction between Bongiovanni and J.D. stick
24 out in your mind after it happened?

25 A. It did. And I, you know, I always try to -- whenever we

1 have meetings with other agencies, I always write a synopsis
2 for a file just to keep notes and retain notes of what
3 transpired in the meeting because it may have some relevance
4 to -- or a nexus to another case. So I try to keep decent
5 notes about what was said and what was transpired.

6 Q. Do you remember any specifics of what Bongiovanni was
7 saying to J.D. during that dressing down, as you described
8 it?

9 A. Just the overall demeanor. You know, he was not very
10 happy. He was angry. And he just says, hey, you know, you
11 deal with the DEA, you deal with me. And that was the gist
12 of it all.

13 Q. During that meeting after Bongiovanni dresses down J.D.,
14 did the meeting progress where you continued to debrief J.D.
15 about the information that he had?

16 A. We were at the point where, you know, I'm gonna take
17 Joe's word at face value that he's working with him and has
18 rapport with him.

19 So at that point in time, we were basically done. We
20 severed our relationship and -- not that we had a
21 relationship, we severed moving forward with Mr. J.D..

22 Q. Did you ask Special Agent Bongiovanni specifically
23 whether J.D. was an officially signed up source?

24 A. I don't recall. I don't recall asking that.

25 Q. Okay. Why wouldn't you ask that? Why not?

1 A. I just wasn't at the point right then and there. We
2 weren't gonna get involved in any kind of drama moving
3 forward and what have you. His word was good enough for me.
4 And we decided to move on.

5 Q. Did you walk away from that meeting with the impression
6 that J.D. was an officially signed up source with
7 Bongiovanni?

8 A. It could have been. I -- I don't know if he was
9 officially signed, but I walked away knowing that they had
10 conducted business in the past, or that they were, you know,
11 they had some type of rapport.

12 Q. Did Special Agent Bongiovanni ever reach out to you
13 afterwards to provide you access to that source to further
14 your investigation?

15 A. Not that I recall.

16 Q. Okay. Without getting into the details again of what
17 J.D. had told you during your first meeting with him, did
18 your investigation into that information progress any further
19 after your meeting with Bongiovanni?

20 A. We -- we were able to conduct some additional checks, and
21 ascertain if there was an individual where a --

22 Q. I'm going to cut you off right there.

23 A. Okay.

24 **MR. COOPER:** Judge, if we can just approach briefly?

25 **THE COURT:** Sure.

2 (Sidebar discussion held on the record.)

8 | **MR. SINGER:** Yeah.

11 **MR. COOPER:** Yeah. So I'm just going to ask a more
12 specific question, and maybe direct him to a yes-or-no answer,
13 okay?

15 **MR. COOPER:** Thank you.

16 (End of sidebar discussion.)

18 Q. So I'm going to ask you a specific question, and I'd ask
19 you to just answer "yes" or "no" to the specific question,
20 okay?

24	A. No.
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25	Q. Okay.
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11:06AM 1 **MR. COOPER:** Just one second, please, Your Honor.

11:06AM 2 **BY MR. COOPER:**

11:06AM 3 Q. Other than that meeting that you described with us, with
11:06AM 4 J.D. and Bongiovanni, had you ever interacted personally with
11:06AM 5 Bongiovanni before?

11:06AM 6 A. I had not. I may have met him in passing, but nothing
11:06AM 7 official as part of business or what have you.

11:06AM 8 Q. Are you familiar with what he looks like?

11:06AM 9 A. Yes.

11:06AM 10 Q. Okay. Do you see him in the courtroom today?

11:06AM 11 A. Yes.

11:06AM 12 Q. Would you point him out and identify an article of his
11:07AM 13 clothing?

11:07AM 14 A. He's right there with the glasses.

11:07AM 15 **MR. COOPER:** Indicating the defendant, Judge.

11:07AM 16 **THE WITNESS:** In the middle.

11:07AM 17 **THE COURT:** Yes, it does, yes.

11:07AM 18 **MR. COOPER:** I have no further questions. Thank you.

11:07AM 19 **THE COURT:** Cross?

11:07AM 20 **MR. SINGER:** Yes, Judge.

11:07AM 21

11:07AM 22 **CROSS-EXAMINATION BY MR. SINGER:**

11:07AM 23 Q. Good morning Mr. Jay.

11:07AM 24 A. Good morning, sir.

11:07AM 25 Q. So, this meeting happened in the summer of 2008?

11:07AM 1 A. Yes, to my best recollection.

11:07AM 2 Q. That was between yourself, Mr. Bongiovanni, and Mr. J.D.?

11:07AM 3 A. And there were -- there were a couple other agents in

11:07AM 4 there as well, I just can't recall who they were.

11:07AM 5 Q. Okay. And so those were agents from your office, Customs

11:07AM 6 and Border Protection?

11:07AM 7 A. That's right. U.S. Border Patrol at the time, yeah.

11:07AM 8 Q. And there were also agents from the DEA as well?

11:07AM 9 A. I believe so.

11:07AM 10 Q. Okay. And so the purpose was to go through the

11:07AM 11 deconfliction process, correct?

11:07AM 12 A. Exactly.

11:07AM 13 Q. Because you had located information that indicated that

11:08AM 14 Mr. J.D. was cooperating with another law enforcement agency,

11:08AM 15 correct?

11:08AM 16 A. Yeah. We were contacted by Buffalo PD, that's correct.

11:08AM 17 Q. Okay. And that's just common practice, right?

11:08AM 18 A. Yes, it is.

11:08AM 19 Q. And you find conflict that someone else has a source that

11:08AM 20 you're talking to, as a matter professional courtesy, you're

11:08AM 21 gonna contact that agency, right?

11:08AM 22 A. That's right. You're gonna stay in your lane.

11:08AM 23 Q. Um-hum. And you'd expect the same thing out of DEA if it

11:08AM 24 was one of your sources who they were talking to, correct?

11:08AM 25 A. That is correct.

11:08AM 1 Q. And so I know you've been doing this for a while. You've
11:08AM 2 developed C.I.s before, correct?

11:08AM 3 A. We have. We've developed confidential sources, yes.

11:08AM 4 Q. Okay. And those confidential sources, when you sign them
11:08AM 5 up, they're somebody that you want to provide information to
11:08AM 6 you, correct?

11:08AM 7 A. That's correct.

11:08AM 8 Q. And I think part of the expectation as an officer is that
11:08AM 9 if they have information, they're gonna come to you first,
11:08AM 10 correct?

11:08AM 11 A. You would think so.

11:08AM 12 Q. Yeah, you would think so. I mean, I know it doesn't
11:08AM 13 happen all the time, right?

11:09AM 14 A. Absolutely.

11:09AM 15 Q. But your expectation is if you sign them you up, they're
11:09AM 16 gonna come to you first, right?

11:09AM 17 A. That's correct.

11:09AM 18 Q. And one of the reasons for that is just, not to get into
11:09AM 19 the bean counting part of the business, but when you sign up
11:09AM 20 a source, that's something that gets tracked by your agency,
11:09AM 21 correct?

11:09AM 22 A. Yes.

11:09AM 23 Q. So it's a statistic, a stat, that you get tracked for,
11:09AM 24 right?

11:09AM 25 A. Yes.

1 Q. Just like opening a case is another stat that you get
2 tracked for, correct?

3 A. Yes.

4 Q. And if you develop a case from a source, that's another
5 stat that gets tracked, correct?

6 A. A lot of tracking, a lot of measurables.

7 Q. Yeah. And so this is something I realize that, you know,
8 has an influence on your own evaluations, correct?

9 A. Possible.

10 Q. Yeah. So, like, for instance your supervisors, when
11 they're doing your annual review, they're taking a look at
12 how many different stats you may have collected throughout
13 the year, right?

14 A. Yes.

15 Q. And this is something that's also passed up to higher
16 headquarters, right?

17 A. Headquarters does have oversight depending on the scope
18 of the case.

19 Q. And I know, I mean, you've been a senior border patrol
20 agent, I think you testified early to, correct?

21 A. That's correct.

22 Q. So you've been in the management of Customs and Border
23 Protection agency?

24 A. I have.

25 Q. And so part of the reasons why agencies keep stats is

1 because that also drives resources and funding decisions in
2 the future, right?

3 A. Sure. To an extent, yes.

4 Q. Yeah. You know, so for instance, if one agency at a
5 location is collecting a certain number of stats, they might
6 receive further resources or -- or manpower if they need it,
7 right?

8 A. Possible.

9 Q. Okay. And so Mr. Bongiovanni, you mentioned, was upset,
10 right?

11 A. Yes.

12 Q. And in your reading of the situation, he's upset at the
13 fact that J.D., who was working with him, went to Customs and
14 Border Protection with this information instead of himself,
15 correct?

16 A. That would be the hypothesis there. Mr. J.D. was talking
17 with the Buffalo PD, whatever they're discussing I didn't
18 delve into that, I didn't discuss how many times they've
19 worked and operated before.

20 I was just contacted, hey, can you come in here and hear
21 what he has to say? It has a nexus to your authority.

22 So I said sure, I'll come down and listen.

23 Q. Um-hum. And I realize that, you know, you did that

24 because you thought that there was nothing to worry about.

25 But when you ran the deconfliction, you realized that he was

1 working with some other agency, right?

2 A. Exactly.

3 Q. And that's why you made the call to Mr. Bongiovanni?

4 A. Yes, correct.

5 Q. And you had the meeting, and you mentioned that
6 Mr. Bongiovanni was upset that that information that was
7 provided to you, it didn't come to him first, correct?

8 A. I'm guessing that's the case.

9 Q. Okay. And, you know, sometimes officers get a little
10 territorial with C.I.s, correct?

11 A. That is totally correct.

12 Q. That's not something that's out of the ordinary in your
13 job, correct?

14 A. Not out of the ordinary.

15 **MR. SINGER:** Okay. No further questions.

16 **MR. COOPER:** Just briefly, Judge.

17

18 **REDIRECT EXAMINATION BY MR. COOPER:**

19 Q. You were just asked some questions about whether it's the
20 out of the ordinary for special agents to get territorial
21 over C.I.s; do you remember being asked that question?

22 A. Yes.

23 Q. Was Defendant Bongiovanni's reaction, his emotional
24 reaction unusual in your experience?

25 A. I mean, I -- I've never seen it. I've always praise in

1 public, criticize in private, so to speak. And that's how
2 I -- my -- my scope, that's how I lead, that's how I operate.
3 It was just kind of awkward to me that he -- that Mr. J.D.
4 was getting dressed down.

5 But, like I said, I don't know what the rapport was. I
6 don't know what they were working on. So --

7 Q. That's okay. So my specific question to you is not about
8 how you handle informants, but what you've observed during
9 your career in law enforcement.

10 Was it unusual, based on your 25-year career in Border
11 Protection, to watch a special agent dress down a C.I. for
12 bringing information to law enforcement?

13 A. Yeah. I thought it was a little -- a little off, off the
14 charts, so to speak.

15 Q. You'd agree with me that getting off the chart and
16 dressing someone down is different than being territorial,
17 right?

18 A. I would say so.

19 Q. Okay. Without getting into any of the details of
20 information that J.D. provided, I want to ask you a general
21 question.

22 Is there a difference in terms of jurisdiction, between
23 cross-border drug trafficking and domestic drug trafficking?

24 A. There's definitely a difference.

25 Q. Okay. You work for Border Protection, right?

11:13AM 1 A. Yes.

11:13AM 2 Q. Do you have jurisdiction to investigate cross-border drug
11:13AM 3 trafficking?

11:13AM 4 A. Yes, we do.

11:13AM 5 Q. What's your understanding of --

11:13AM 6 **MR. SINGER:** Objection. This goes outside the scope.

11:13AM 7 **THE COURT:** Yeah.

11:13AM 8 **MR. COOPER:** Judge, I'd like to be heard on that.

11:13AM 9 Maybe we can approach?

11:13AM 10 **THE COURT:** Come on up.

11:13AM 11 (Sidebar discussion held on the record.)

11:13AM 12 **MR. COOPER:** Judge, the cross-examination pointed to
11:13AM 13 the fact that this is merely territorial dispute between CBP
11:13AM 14 and DEA. I'm now redirecting to point out that they have
11:14AM 15 separate territories. That's absolutely within the scope of
11:14AM 16 cross-examination.

11:14AM 17 **THE COURT:** They have separate territories?

11:14AM 18 **MR. COOPER:** Correct.

11:14AM 19 **THE COURT:** I thought he just said that he -- that
11:14AM 20 there was an overlap.

11:14AM 21 **MR. COOPER:** No, he -- so I asked him what CBP's
11:14AM 22 jurisdiction was if they did cross-border drug trafficking,
11:14AM 23 and he said yes.

11:14AM 24 And then I asked if DEA handled domestic drug
11:14AM 25 trafficking, and there was an objection.

1 But I'm drawing the distinction between territories,
2 which is well within the scope of the cross-examination, that
3 this was a territorial dispute.

4 They have different territories.

5 **MR. SINGER:** Two things. Number one is that when we
6 talked about territorial, we talked about being territorial
7 with a C.I. We didn't talk about what territory DEA covers,
8 and what territory Customs and Border Protection covers.
9 That's why it's outside the scope.

10 That's the answer that we got, was that he felt like
11 agents weren't always, you know, like, they sometimes would
12 get territorial with their C.I.'s, meaning that, hey, that's
13 my C.I.

14 **THE COURT:** Yeah. No, no, I think he's right. I
15 think he's right. I think this is beyond the scope. I don't
16 think that this advances what you're saying now, and the fact
17 that he used the word territorial had nothing to do with
18 territory that DEA covers, and territory that Customs and
19 Border Protection covers. So, no.

20 **MR. COOPER:** Judge, without the testimony coming in,
21 it furthers the inference that was led on cross-examination
22 that it's just a C.I. that they're fighting over.

23 Redirect is to point out the C.I. had information
24 that could be acted upon by CBP that could not have been acted
25 upon by DEA.

1 **THE COURT:** Yeah, but he still wants the informant to
2 go to him first, and that doesn't change that at all. So, no,
3 you're not getting into that.

4 **MR. COOPER:** Okay.

5 (End of sidebar discussion.)

6 **THE COURT:** The objection is sustained.

7 Anything else?

8 **MR. COOPER:** Yes, Judge.

9 **BY MR. COOPER:**

10 Q. You were asked questions about whether this was an
11 territorial dispute between agencies over an informant; do
12 you remember being asked those questions?

13 A. Yes, sir.

14 Q. Okay. Was this information that J.D. had information
15 that you could have collaborated with DEA on to investigate?

16 A. Oh, absolutely. We have a great rapport with members of
17 the DEA, HSI, et cetera. We could have done something
18 jointly, but we just left it.

19 **MR. COOPER:** I have no further questions, Judge.

20 **THE COURT:** Anything else?

21 **MR. SINGER:** Just one moment, Judge.

22
23 **RECROSS-EXAMINATION BY MR. SINGER:**

24 Q. Mr. Jay, the deconfliction that you talked about, that was
25 through Mr. J.D., correct?

1 A. What do you mean the deconfliction? I'm not following
2 you.

3 Q. When you found out about Mr. J.D. working with another
4 agency, Mr. J.D. told you that?

5 A. That's correct.

6 Q. Okay.

7 **MR. SINGER:** Thank you. I have no further questions.

8 **THE WITNESS:** You're welcome.

9 **MR. COOPER:** Nothing further, Judge.

10 **THE COURT:** You can step down, sir. Thank you.

11 (Witness excused at 11:17 a.m.)

12 (Excerpt concluded at 11:17 a.m.)

13 * * * * *

14
15 **CERTIFICATE OF REPORTER**

16 In accordance with 28, U.S.C., 753(b), I certify that
17 these original notes are a true and correct record of
18 proceedings in the United States District Court for the
Western District of New York on February 26, 2024.

19 s/ Ann M. Sawyer

20 Ann M. Sawyer, FCRR, RPR, CRR
21 Official Court Reporter
22 U.S.D.C., W.D.N.Y.
23
24
25

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